Supreme Court, U.S.
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No. 04 158

In The

Supreme Court of the United States

H. BEATTY CHADWICK,

Petitioner,

v.

JOHN DOUGLAS CAULFIELD, Warden,
George W. Hill Correctional Facility, and
BARBARA CROWTHER CHADWICK,

Respondents.

On Petition For Writ Of Certiorari
To The Superior Court Of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the indefinite civil confinement of a contemnor for more than nine years causes a deprivation of his liberty without due process of law?

2. Whether the indefinite civil confinement of a contemnor for more than nine years without affording a jury trial on the issue of his ability to comply under a standard of proof beyond a reasonable doubt causes him a deprivation of his liberty without due process of law?

3. Whether the indefinite civil confinement of a contemnor for more than nine years for the purpose of coercing the payment of money causes him a deprivation of his liberty without due process of law?

4. Whether the indefinite civil confinement of a contemnor without an impartial de novo review of the record to determine that the factfinding was substantially and clearly supported thereby causes him a deprivation of liberty without due process of law?

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PETITION FOR A WRIT OF CERTIORARI

H. Beatty Chadwick, the Petitioner, respectfully prays that a Writ of Certiorari issue to review the judgment of the Superior Court of Pennsylvania entered in the above-entitled case on September 8, 2003, the Supreme Court of Pennsylvania having denied Petitioner's petition for allowance of appeal on June 29, 2004.

OPINIONS BELOW

The opinion and order of the Superior Court of Pennsylvania dated September 8, 2003 has been published at 834 A.2d 562 and is attached as Appendix A. The opinion of the Court of Common Pleas of Delaware County, Pennsylvania dated February 3, 2003 is attached as Appendix B. The order of the Superior Court of Pennsylvania dated November 12, 2003 which denied reargument is attached as Appendix C. The order of the Court of Common Pleas of Delaware County dated November 7, 2002 which denied Mr. Chadwick's petition for writ of habeas corpus is attached as Appendix D. The order of the Supreme Court of Pennsylvania dated June 29, 2004 denying discretionary review is attached as Appendix E.

JURISDICTION

Jurisdiction is conferred upon this Court by 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

This case involves the following provisions of the United States Constitution:

Amendment Six:

> In all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment Fourteen, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction of the United States, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner H. Beatty Chadwick has been imprisoned since April 5, 1995 for "civil" contempt of an order that he deposit $2.5 million in an account controlled by the

Delaware County (Pennsylvania) Court of Common Pleas, for eventual equitable distribution in a divorce action.

Mr. Chadwick's wife commenced a divorce action against him on November 23, 1992. On July 22, 1994, at Mrs. Chadwick's request, the state trial court directed Mr. Chadwick to pay $2,500,000 in cash into a bank account under the control of the state court, presumably so the money would be available for distribution in the divorce proceeding.[1] This sum was the major part of a $2,502,000 investment made by Mr. Chadwick nearly eighteen months before the state court order under the terms of a joint venture agreement between Mr. Chadwick and Maison Blanche, Limited, a Gibraltar corporation, entered into in August, 1990. Mr. Chadwick maintains that he possesses the investment interest, but was then and still is unable to reclaim the cash.

On August 29, 1994 and again on October 31, 1994, the trial court adjudicated Mr. Chadwick in contempt of its July 22, 1994 order. By order dated November 2, 1994, the trial court directed that Mr. Chadwick be arrested and imprisoned indefinitely, "until a further hearing is held." No condition was stated upon the performance of which Mr. Chadwick would be released. No trial was held and no trial by jury was offered. The record is devoid of evidence that Mr. Chadwick then had the cash resources, or any resources readily convertible into cash, that could satisfy the trial court's payment order.[2] No findings of fact or

[1] The parties were granted a bifurcated divorce on November 15, 2001, but property distribution issues remain to be determined.

[2] Statements to the contrary in the opinions below are based upon the same state court factfinding challenged in the habeas corpus

(Continued on following page)

conclusions of law were filed. Mr. Chadwick appealed both the order of July 22, 1994 and the order of November 2, 1994 which directed his imprisonment, but the state Superior Court quashed these appeals as the orders were deemed interlocutory.

On April 5, 1995 Mr. Chadwick was arrested and imprisoned. He has remained imprisoned under the order dated November 2, 1994.

Mr. Chadwick unsuccessfully sought habeas corpus relief in a series of petitions filed with the same state trial court which had ordered his imprisonment. The state Superior Court affirmed the denial of habeas relief on August 22, 1996 and again on April 23, 1997. The state Supreme Court denied discretionary review on April 8, 1997, and this Court denied certiorari, *sub nom. Chadwick v. Andrews*, 522 U.S. 864 (1997). On September 27, 1999 Mr. Chadwick filed a habeas corpus petition with the Pennsylvania Supreme Court under that Court's statutory original jurisdiction. No hearing or argument was held. The petition was denied on February 8, 2000 in a summary order, without opinion.

Mr. Chadwick then sought federal habeas corpus relief. On January 3, 2002 the United States District Court for the Eastern District of Pennsylvania granted his petition on the ground that his imprisonment had become impermissibly punitive and thus a violation of his due process rights. *Chadwick v. Janecka*, 2002 U.S. Dist. LEXIS 10 (E.D. Pa. 2002). Mrs. Chadwick, who had intervened in the case, appealed and on August 20, 2002

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proceeding at issue for lack of support in the evidentiary record which the courts below declined to review.

the United States Court of Appeals for the Third Circuit reversed the judgment of the District Court because, after applying the standards in 28 U.S.C. § 2254(d)(1), it concluded that this Court had never held that the due process clause limits the length of time a person may be confined for civil contempt and therefore the refusal of the state court to release Mr. Chadwick, notwithstanding his lengthy imprisonment, would not be unreasonable. *Chadwick v. Janecka*, 312 F.3d 597, 613 (3rd Cir. 2002). This Court denied certiorari, *sub nom. Chadwick v. Chadwick*, 538 U.S. 1000 (2003). The Court of Appeals noted, however, that Mr. Chadwick could file a new habeas petition if he was unable to comply with the order which caused his imprisonment. 312 F.3d at 614.

On August 19, 2003 Mr. Chadwick filed a new federal habeas corpus petition with the District Court which asserted, as had the earlier petition, a claim for denial of due process of law on the ground that his civil imprisonment was based upon an order with which he was unable to comply and as to which he was not afforded a jury trial on the issue of ability to comply. Mr. Chadwick submitted that the District Court had not adjudicated these claims in the earlier proceeding. The District Court dismissed the petition on October 20, 2003 on the ground it was second or successive and that the District Court therefore lacked jurisdiction under 28 U.S.C. § 2244(b)(1). Mr. Chadwick's motion for a certificate of appealability was denied by the District Court and on May 25, 2004 also denied by the Court of Appeals. Mr. Chadwick filed a petition for writ of certiorari with this Court on July 1, 2004. *Chadwick v. Caulfield*, Docket No. 04-26.

Mr. Chadwick filed a petition for writ of habeas corpus with the state trial court on September 4, 2002 raising the

federal Constitutional claims at issue here together with state law claims. At a hearing on October 10, 2002 the Respondent, Mr. Chadwick's custodian, appeared through counsel but did not file an answer or object to the grant of habeas relief. Mrs. Chadwick was permitted to intervene over Mr. Chadwick's objection, and filed an answer opposing Mr. Chadwick's release. On November 7, 2002 the state trial court dismissed the petition and on September 8, 2003 the state Superior Court affirmed the dismissal. Mr. Chadwick's application for reargument was denied on November 12, 2003. The state Supreme Court denied discretionary review on June 29, 2004.

The issues presented in this Petition arise from the same facts as the petition in Docket No. 04-26. The petition in Docket No. 04-26, however, is before the Court solely on a procedural issue: whether a certificate of appealability should issue to permit the Court of Appeals to consider if the federal courts even have jurisdiction to decide the merits of Mr. Chadwick's habeas petition. That petition raises, if jurisdiction is found, two of the four issues presented in the instant case, but does so subject to the deference to state court determinations required by 28 U.S.C. § 2254(d)(1). If the Court reviews the instant case, the substantive issues raised in the federal habeas petition would be part of such review.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted to settle several important questions of federal law that have not been but should be decided by this Court in connection with the

imposition of imprisonment as a sanction for civil contempt.

I. CERTIORARI SHOULD BE GRANTED TO SETTLE THE LIMITATIONS ON THE LENGTH OF IMPRISONMENT WHICH MAY BE IMPOSED, CONSISTENT WITH THE DUE PROCESS CLAUSE, AS A SANCTION FOR CIVIL CONTEMPT.

Mr. Chadwick has been imprisoned for civil contempt for over nine years, one of the longest, if not the longest such imprisonment in the United States. The state habeas court asserts the right to continue that imprisonment without any limitation on its duration. (App. 21). The state Superior Court declared that in the absence of a ruling by the state Supreme Court it would not disturb that conclusion. (App. 13). When the state Supreme Court denied discretionary review, therefore, Mr. Chadwick effectively was condemned to potentially permanent imprisonment.

Federal habeas corpus relief also is unavailable. In an application brought by Mr. Chadwick, the Third Circuit held that there was no precedent from this Court which limited imprisonment for civil contempt. Consequently, under the restrictions in 28 U.S.C. § 2254(d)(1) the federal courts could not grant habeas relief on that ground. *Chadwick v. Janecka*, 312 F.3d 597, 613 (3rd Cir. 2002).

In the early leading case dealing with contempt imprisonment, *Gompers v. Bucks Stove and Range Co.*, 221 U.S. 418, 442-52 (1911), the Court distinguished between imprisonment for punitive purposes and imprisonment for coercive purposes. The Court held that a twelve month sentence imposed on Samuel Gompers in a civil contempt

proceeding had no coercive force and therefore was punitive and could not be imposed, consistent with the due process clause, without affording criminal due process rights. More recently, in *United Mine Workers v. Bagwell*, 512 U.S. 821, 838 (1994) the Court reaffirmed that punitive sanctions are impermissible in civil contempt proceedings, holding that a prospectively announced $52 million fine for violation of an injunction was punitive due to its serious nature.

A number of lower federal courts and some state courts have derived from these decisions the principle that when there is no reasonable likelihood that imprisonment for civil contempt will compel compliance, the imprisonment loses its coercive force, becomes impermissibly punitive and must be terminated. *Lambert v. Montana*, 545 F.2d 87, 89-91 (9th Cir. 1976); *In re Grand Jury Investigation*, 600 F.2d 420, 424 (3rd Cir. 1979); *Soobzokov v. CBS Inc.*, 642 F.2d 28, 31 (2nd Cir. 1981); *United States v. Lippitt*, 180 F.3d 873, 876-79 (7th Cir. 1999); *In re Lawrence*, 279 F.3d 1294, 1300 (11th Cir. 2002). Also *Catena v. Seidel*, 344 A.2d 744, 747 (N.J. 1975); *Morgan v. Foretich*, 564 A.2d 1, 4 (D.C. 1989). The habeas court below, however, has rejected this principle as a limitation on its power to impose civil confinement. (App. 21).

Moreover, the Third Circuit has suggested that this Court may have rejected it as well. After pointing out that the "Supreme Court has never endorsed the proposition that confinement for civil contempt must cease when there is no 'substantial likelihood of compliance,'" the Third Circuit continued: "On the contrary . . . the *Bagwell* Court stated that [t]he paradigmatic coercive, civil contempt sanction . . . involves confining a contemnor indefinitely until he complies with an affirmative command. . . . "

Chadwick, 312 F.3d at 613 (citing *Bagwell*, 512 U.S. at 828). The quoted portion of the *Bagwell* opinion, however, was out of context; it was simply part of the Court's introduction which reviewed the historical application of the contempt power. A fine, not confinement, was the sanction imposed in *Bagwell*, so that neither confinement nor its length were at issue in *Bagwell* and neither were implicated in the holding of that decision.

Even where the "no reasonable likelihood" standard has been applied, the point at which imprisonment ceases to be coercive frequently is "not readily discernible." *In re Grand Jury Investigation*, 600 F.3d at 425. Nevertheless, this Court has recognized that the passage of time will cause imprisonment to lose its coercive character. In *Maggio v. Zeitz*, 333 U.S. 56, 76 (1948), where a bankrupt was jailed for noncompliance with a turnover order as to which he claimed an inability to comply, the Court remarked:

> "The credibility of his denial is to be weighed in the light of present circumstances. It is everywhere admitted that even if he is committed he will not be held in jail indefinitely if he does not comply. His denial of possession is given credit after demonstration that a period in prison does not produce the goods."

Maggio further elaborated this point by quoting with approval from a decision written by Chief Justice Taft in *Oriel v. Russell*, 278 U.S. 358, 365 (1929):

> "In the pending case, or in any other, the court may believe the . . . assertion that he is not now in possession or control of the money . . . , and in that event the civil inquiry is at an end; but it is also true that the assertion may not be

> believed, and the bankrupt may therefore be . . . restrained of his liberty. . . . I have known a brief confinement to produce the money promptly, thus justifying the court's incredulity, and I have also known it to fail. Where it has failed, and where a reasonable interval of time has supplied the previous defect in the evidence, and has made sufficiently certain what was doubtful before, namely the bankrupt's inability to obey the order, he has always been released, and I need hardly say that he would always have the right to be released. . . . " *Maggio*, 333 U.S. at 72.

Maggio suggests that the law eventually ceases trying in the civil context to distinguish inability to comply from adamant refusal. After "a reasonable interval of time" in jail has failed to produce compliance, an inability to comply is presumed. These statements in *Maggio*, however, are dicta. Moreover, the Third Circuit decision involving Mr. Chadwick would limit the dicta to cases where the contemnor is unable to comply with the order which resulted in the contempt,[3] *Chadwick*, 312 F.3d at 613, a circumstance which should have ruled out use of the sanction at all.

Not only is there considerable uncertainty as to what, if any, Constitutional limits apply to civil contempt imprisonment, even where the "reasonable time" limitation has been accepted, in practice the implementation has

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[3] *Maggio* recognized, however, that both the question of ability to comply *and* the efficacy of an imprisonment sanction must be considered in imposing a sanction for contempt. The factfinding judge, the Court states, must address a two fold question: "Whether or not there is actually a present ability to comply and whether failure to do so constitutes a deliberate defiance which a jail term will break." *Maggio*, 333 U.S. at 76.

been delegated to the same court which adjudicated the sanction in the first place. *Lambert*, 545 F.2d at 91; *Simkin v. United States*, 715 F.2d 34, 39 (2nd Cir. 1983); *Matter of Credediо*, 759 F.2d 589 (7th Cir. 1985); *In re Lawrence*, 279 F.3d at 1301. That court, however, is least likely to be impartial. As this Court recognized in *Bagwell*, "Contumacy often strikes at the most vulnerable and human qualities of a judge's temperament [citing *Bloom*, 391 U.S. at 202] and its fusion of legislative, executive and judicial powers summons forth . . . the prospect of 'the most tyrannical licentiousness'". [Citing concurring opinion of Justice Scalia in *Young v. United States ex rel. v. Vuitton et fils, S.A.*, 481 U.S. 787, 822 (1987)]. *Bagwell*, 512 U.S. at 831. From the perspective of the court which imposed the sanction, much like that of a crime victim, there may never come a time at which the imprisonment becomes unreasonable in length. The length of the imprisonment therefore becomes, as the state court has declared in Mr. Chadwick's case, unreviewable.

Recognizing this concern, the court in *Morgan* released a contemnor after a fruitless 23 month confinement, pointing out that "we cannot settle for a virtually unreviewable exercise of trial court discretion when due process of law is at stake." *Id.* 564 A.2d at 7, n. 5. In *Credediо* just such a prospect concerned Judge Posner who dissented, pointing out that

> "We should keep a bright line between civil and criminal contempt . . . [civil contempt imprisonment] is an anomaly in our system and is permitted only when the purpose is not to punish for past miscreancy but to induce a specific act that the law has a right to coerce. . . . As soon as it is clear that the inducement won't work, the

> purpose of civil contempt lapses and the continued imprisonment of the man becomes penal and requires a criminal proceeding." *Id.* 759 F.2d at 594.

Existing case law suggests some guidelines which could form the basis of the line between coercive and punitive imprisonment. The Court in *McNeil v. Director, Patuxent Institution*, 407 U.S. 245, 250 (1972) noted that analogous statutory limitations, such as the punishment for criminal contempt, provide a "useful benchmark" for determining the permissible length of civil confinement. In that connection, it is significant that Pennsylvania, the state imposing the sanction at issue here, limits imprisonment for indirect criminal contempt to fifteen days, 42 Pa. C.S. § 4136, and imprisonment for failing to comply with a divorce decree to six months, 23 Pa. C.S. § 3502(e)(6). In *In re Grand Jury Investigation* the Third Circuit declined to grant early release to an obdurate witness, concluding that the eighteen month limitation on civil contempt confinement in 18 U.S.C. § 1826(a) "reflects a deliberate Congressional attempt to resolve the problem of drawing a line between coercion and punishment," thereby suggesting that this line is a significant benchmark for other courts facing the "often perplexing task of determining whether the confinement has essentially become punitive." 600 F.2d at 425. The opinion remarked that this legislation was a compromise between the Senate, whose bill continued no limitation, and the House, which contended that the absence of a limitation would give the penalty a punitive character. *Id.* at 426.

In other realms, the Court has considered and placed time limitations on civil confinement. The Court has

declared that due process requires that the nature and duration of the civil confinement of the mentally ill must bear a reasonable relation to the purpose for which the individual is committed. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) the Court constructed a six month limit beyond a statutory ninety day removal period for which an alien awaiting deportation could be civilly confined. The Court reasoned, in part, that "Congress [which earlier had reduced the initial removal period from six months to ninety days] previously doubted the constitutionality of detention for more than six months."

Mr. Chadwick's imprisonment for over nine years is far in excess of any of these benchmarks. It obviously is critical for Mr. Chadwick to obtain review by this Court because the state courts and the lower federal courts are either unwilling or unable to place a limit on the length of his confinement. The issue also is important in a larger context. Freedom from restraint, a fundamental liberty in our society, is ordinarily taken away only in strict adherence to the statutory and procedural requirements of the criminal law. Nevertheless, in the area of civil contempt judges have asserted a nearly unfettered right to imprison and impose other sanctions at will. The Court is urged to review this issue and to provide clearer guidelines to the lower courts, consistent with notions of due process.

II. CERTIORARI SHOULD BE GRANTED TO SETTLE THAT THE DUE PROCESS CLAUSE REQUIRES A SIXTH AMENDMENT JURY TRIAL AND A STANDARD OF PROOF BEYOND A REASONABLE DOUBT IN CIVIL CONTEMPT CASES WHERE A SERIOUS IMPRISONMENT IS IMPOSED.

The habeas trial court rejected Mr. Chadwick's claim that the serious nature of the imprisonment imposed on him required that he be afforded a jury trial and criminal law procedural protections with respect to the factual issue as to his ability to comply. (App. 28). The state Superior Court affirmed the habeas court decision. (App. 18). The state Superior Court, however, did not further discuss this issue or the following issues raised in this petition, claiming that such issues previously had been considered by the state Supreme Court as part of the habeas corpus petition filed by Mr. Chadwick with that court in 1999 under the state Supreme Court's original jurisdiction. (App. 12). Although presented, the record demonstrates that these issues were not fully considered, if they were considered at all, by the state Supreme Court, which held no hearing, heard no argument and denied the petition without explanation.[4] Accordingly, Mr. Chadwick

[4] In prior decisions, the state Supreme Court had declared that it generally will not consider the merits of habeas petitions filed under its original jurisdiction. It is only in cases of "imperative necessity or apparent reason why expedition is desirable or required," *Commonwealth ex rel. Paylor v. Claudy*, 77 A.2d 350, 352 (Pa. 1951), the court has said that it will "dispense with the benefit of full and adequate consideration by a lower court." *Commonwealth ex rel. Hartage v. Hendrick*, 268 A.2d 451, 452 (Pa. 1970). Both the federal and Pennsylvania law recognize that where a habeas claim has not been fully considered and adjudicated there is no impediment to its consideration

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submits that the affirmance of the habeas trial court operates to adopt the judgment of that court on this and the other issues the Superior Court did not specifically discuss.

Civil contempt cases frequently involve critical issues of fact. Civil contempt imprisonment may not be imposed for the failure to perform an act the contemnor is not able to perform. *Maggio*, 333 U.S. at 72. Mr. Chadwick maintains that he was and is unable to deposit with the court the money he was ordered to pay and argues that the record evidence does not support that he had the ability to do so. This critical issue was decided by the state trial judge who ordered his confinement. No trial by impartial jury was afforded. Moreover, the court below concluded that Mr. Chadwick had the burden of proving that he did *not* have the ability to make the required payment. (App. 18, 36).

The process that is due to accused contemnors has evolved substantially. In *Green v. United States*, 356 U.S. 165, 183 (1958) the Court held that no jury trial was required in criminal contempt. The Court subsequently declared in a decision relied upon by the habeas court below (App. 29) that a jury trial was not available to civil contemnors. *Shillitani v. United States*, 384 U.S. 364, 371 (1966). Then, in *Bloom v. State of Illinois*, 391 U.S. 194, 208 (1968) the Court held that trial by jury must be afforded in cases of criminal contempt as in all other criminal cases.

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in a later petition. *Sanders v. United States*, 373 U.S. 1, 16 (1963); *Commonwealth ex rel. Bordner v. Russell*, 221 A.2d 177, 179 (Pa. 1966).

More recently, in *Bagwell*, the Court reviewed a $52 million fine imposed upon the United Mine Workers for violation of a prospectively announced order in a proceeding the state court had characterized as civil contempt. After noting that "numerous scholars have criticized as unworkable the traditional distinction between civil and criminal contempt," 512 U.S. at 827, n. 3, the Court declined to make that distinction in *Bagwell* and held that the contempt was punitive in nature because of the seriousness of the sanction. Therefore, a jury trial and criminal law protections should be afforded. *Id.* at 837-38. The opinion in *Bagwell* reasoned that the possibility of a serious sanction and the need to decide a material fact require an impartial fact finder instead of the judge offended by the contempt. *Id.* at 832, 834.

Bagwell appears to stand for the proposition that a jury trial and criminal law protections must be afforded whenever there is the possibility that a serious sanction will be imposed regardless of whether the contempt is characterized as civil or criminal in nature. The *Bagwell* opinion itself indicated that sanctions in excess of a $5,000 fine or six months' imprisonment – the threshold between petty and serious offenses – would be considered "serious." *Id.* at 837, n. 5. The habeas court below rejected this reading of *Bagwell*, however (App. 30), as have numerous lower federal courts. Commenting on such decisions, one court remarked that "it is not surprising that District Courts around the country, reluctant to surrender part of their power to coerce obedience to their decrees, have resisted the logic of *Bagwell*." *Evans v. Williams*, 206 F.3d 1292, 1297 (D.C. Cir. 2000).

Some decisions take words out of context in the Court's introduction to *Bagwell* which reviews the development and state of the law before considering the issue to be decided there. Thus, the opinion states that while serious criminal contempts required a jury trial under *Bloom*, "[i]n contrast, civil contempt sanctions, or those penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience . . . neither a jury trial nor proof beyond a reasonable doubt is required." 512 U.S. at 827. The habeas trial court below (App. 30) took this statement out of context, treating it as a holding in the case when it was not. Since the gist of *Bagwell* was that certain serious contempts did require criminal law protections, the statement of pre-*Bagwell* law was in fact largely contrary to the holding that ultimately emerged.

Furthermore, *Bagwell* itself involved what the Court described as a "complex injunction which often require[s] elaborate and reliable factfinding." *Id.* 512 U.S. at 834. Thus, some courts have distinguished between contempts involving complex injunctions, where a jury trial must be offered, and more simple orders where it was not required. *Jake's Ltd., Inc. v. City of Coates*, 356 F.3d 896, 903 (8th Cir. 2004); *F.T.C. v. Kuykendall*, 312 F.3d 1329, 1342 (10th Cir. 2002); *N.O.W. v. Operation Rescue*, 37 F.3d 646, 660 (D.C. Cir. 1994). The evil that *Bagwell* sought to redress, however – the difficulty of obtaining an impartial decision from the court offended by the contempt – would be present, regardless of the complexity of the order in question, so long as a material issue of fact needed to be decided.

Moreover, although the thrust of *Bagwell* was that serious contempt sanctions were punitive and thus

required criminal law protections even in civil proceedings, *Id.* 512 U.S. at 831, some courts have seized upon a statement in the opinion that the sanction imposed in *Bagwell* was "criminal," *Id.* at 838, to conclude that *Bagwell* applied only to cases of criminal contempt and did not apply in civil contempt. *United States v. Santee Sioux Tribe of Nebraska*, 254 F.3d 728, 736 (8th Cir. 2001); *American Airlines Inc. v. Allied Pilots Association*, 228 F.3d 574, 583 (5th Cir. 2000); *United States v. Ayers*, 166 F.3d 991, 995 (9th Cir. 1999); *New York State N.O.W. v. Terry*, 159 F.3d 86, 93-94 (2nd Cir. 1998); *In re E.I. Du-Pont-Benlate Litigation*, 99 F.3d 363, 368-69 (11th Cir. 1996); *Harris v. City of Philadelphia*, 47 F.3d 1311, 1329 (3rd Cir. 1995).

The logic of *Bagwell* – that the due process clause requires a jury trial and criminal law protections whenever a serious sanction is to be imposed in order to assure an impartial fact finder appears unmistakable when the decision is read as a whole. In view of the confusion among lower courts as to its meaning and the sheer reluctance of some courts to apply it, as in the instant case, this Court is urged to revisit the issue to clarify that due process requires criminal law protections before serous sanctions such as Mr. Chadwick's lengthy confinement may be imposed even in a civil proceeding.

III. CERTIORARI SHOULD BE GRANTED TO SETTLE WHETHER IMPRISONMENT OF A CONTEMNOR TO COERCE THE PAYMENT OF MONEY VIOLATES THE DUE PROCESS CLAUSE.

Although the order which directs Mr. Chadwick's indefinite confinement is not conditioned upon the

payment of money, or indeed any other act, the courts below have treated it as an order to coerce the payment of $2,500,000 he was ordered to deposit with the court. (App. 11, 21).

The Constitutional right against imprisonment for civil debt is well established. *Oriel*, 278 U.S. at 366. However, imprisonment may be imposed to compel compliance with a judicial order. *Id.* The habeas court made that distinction in rejecting Mr. Chadwick's claim that imprisonment for nonpayment of money to the court was Constitutionally unsound. (App. 35). Nevertheless, where the judicial order is one which mandates the payment of money, the distinction between a debt and a judicial order which creates a debt obligation appears to be without a difference. This Court has held, for example, that a state may not impose a fine and convert it into a jail sentence solely because the fine cannot be paid. *Bearden v. Georgia*, 461 U.S. 660, 667 (1983).

It generally is recognized that civil contempt is not a proper proceeding to coerce the payment of money. *Combs v. Ryan's Coal Co.*, 785 F.2d 970, 985 (11th Cir. 1986); *Aetna Casualty and Surety Co. v. Markarian*, 114 F.3d 346, 349-50 (1st Cir. 1997). A recent decision by the District of Columbia Court of Appeals, *In re Estate of Bonham*, 817 A.2d 192, 195 (D.C. 2003) reviewed the various state decisions which uniformly held that imprisonment is an inappropriate means to enforce an order for payment of money. Except as specifically authorized by statute (such as imprisonment for non support) or exceptional circumstances, *Bonham* held that imprisonment may not be used to coerce the payment of money, including money for counsel fees and costs payable to the court. *Id.* See also *Wilson v. Wilson*, 21 A. 807 (Pa. 1891) (an order for the

payment of money, without more, would not subject the party against whom the order is made to the process of attachment).

Where a contemnor is unable to pay the money, imprisonment clearly would be unlawful under *Maggio*, 333 U.S. at 72, as an attempt to coerce an act incapable of performance. Moreover, it obviously would be fruitless as no amount of confinement could coerce compliance. On the other hand, where the ability to pay exists, other legal remedies are available. In such a circumstances the proper remedy is a writ of execution, attachment or garnishment, or where applicable, imposition of a constructive trust. The Court long has adhered to the doctrine that in the exercise of its power to punish for contempt "the least possible power adequate to the end proposed" should be used. *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 221 (1821). See also *In re Michael*, 326 U.S. 224, 227 (1945).

The use of a court's equity power to imprison for failure to comply with a payment obligation invites abuse. It easily can be misused as an extraordinary collection remedy or at least collection leverage by creditors and potential creditors. As Mr. Chadwick's case has demonstrated, confinement can be ordered without sufficient evidence of ability to pay, and the defendant being required, while in prison, to essentially prove a negative – that he does *not* have the ability to pay.

Moreover, in realms other than contempt the Court has placed substantial restrictions upon the use of civil confinement. In *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) the Court held that an alleged mentally ill person may be civilly confined only where there was clear and convincing evidence that the person is a danger to himself

or others, declaring that "It would . . . be only a step away from substituting confinements for dangerousness for our present system, which with only narrow exceptions and aside from permissible confinements for mental illness, incarcerates only those who are proved beyond a reasonable doubt to have violated a criminal law." *Id.* at 83. Another decision, *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997) upheld civil confinement under a state sexual predator law but only where proof of dangerousness was coupled with proof of another factor, such as mental illness or abnormality, and strict evidentiary and procedural standards, including a maximum confinement term, applied. The Court also considered civil confinement in the context of pretrial detention of dangerous suspects under the Bail Reform Act. *United States v. Salerno*, 481 U.S. 739 (1987) upheld the provisions of the Act but only because those affected were entitled to a prompt detention hearing and the maximum length of the detention was limited by the Speedy Trial Act.

These decisions subsequently were cited in *Zadvydas*, 533 U.S. at 690, which while limiting the civil confinement of deportable aliens, declared that the due process clause places strict limitations on civil confinement:

> "This Court has said that government detention violates that [Due Process] Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, see *United States v. Salerno*, 481 U.S. 739, 746 (1987) or, in certain special and narrow non-punitive circumstances, *Foucha* at 80, where a special justification, such as harm – threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint.

Kansas v. Hendricks, 521 U.S. 346, 356 (1997)" (emphasis in original).

The foregoing suggests there must be a "special justification" for civil confinement. In view of the widespread condemnation against using imprisonment to coerce the payment of money, it is difficult to conclude that such a justification can be available for that purpose. The Court is urged to review the use of that practice in light of these decisions.

IV. CERTIORARI SHOULD BE GRANTED TO SETTLE THAT THE DUE PROCESS CLAUSE REQUIRES AN ADJUDICATION OF CONTEMPT IMPRISONMENT TO BE REVIEWED DE NOVO BY AN IMPARTIAL COURT.

The state court which found Mr. Chadwick in contempt and directed his imprisonment made no findings of fact other than that Mr. Chadwick had not complied with the order to pay money into court. There was no finding as to whether he had the ability to do so. Since the order was interlocutory, Mr. Chadwick was unable to directly appeal and was limited to collateral remedies. The court which heard his habeas corpus petitions was the same court that ordered his imprisonment and, not surprisingly, found no errors in the earlier proceeding. It was the habeas trial court in 1995 which for the first time did make a finding that Mr. Chadwick had the ability to comply, claiming that Mr. Chadwick had various bank accounts in the United States and abroad. The evidentiary record, however, never supported those claims; they were based solely on unfounded allegations by Mr. Chadwick's wife. Nevertheless, under the limited standard of review applied to habeas corpus, the state Superior Court accepted and even

reported in its own opinion those findings as true in the absence of proof that the habeas trial court action was the result of "partiality, prejudice, bias or ill will."

The habeas trial court in the application involved in this appeal was again the same court as the one which imposed the confinement in the first place. Although the record in the contempt proceeding was admitted in evidence, the habeas court relied not on it, but on the unsupported and erroneous findings in the 1995 habeas proceeding on the issue of Mr. Chadwick's ability to comply. (App. 22, 23). The Superior Court repeated the same findings (App. 2-3) again accepting them as true under the limited manifest abuse of discretion standard of review. (App. 8).

As a consequence, although Mr. Chadwick's imprisonment can be justified, if at all, only if he had the ability to comply, the record never has been reviewed by an impartial court to determine whether it supported a conclusion that he possessed such ability. The erroneous state court factfinding subsequently was adopted by the federal courts pursuant to 28 U.S.C. § 2254(e). Mr. Chadwick raised the claim that the state court factfinding was not reasonably supported by the evidence in accordance with 28 U.S.C. § 2254(d)(2), but that claim never was decided as habeas relief was granted on other grounds, later reversed.

The Court, writing in the context of federal habeas review of state proceedings, has emphasized the importance of fair support in the record for the factual determinations which underlie confinement:

> "This Court has consistently held that state factual determinations not fairly supported in

> the record cannot be conclusive of federal rights. (citing cases) Where the fundamental liberties of the person are claimed to have been infringed we carefully scrutinize the state court record."

Townsend v. Sain, 372 U.S. 293, 316 (1963).

Due process should require no less when a case which challenges imprisonment comes before the Court not through federal habeas corpus, but as the instant case does, directly from the state court. Commenting on the possibility that a court may erroneously imprison a contemnor, the Court has emphasized the right of appellate review as a necessary protection. *Oriel*, 278 U.S. at 364. Mr. Chadwick should have an impartial court make a de novo review of the record to determine whether, as he contends, the evidence fails to support the conclusion that he has the ability to comply.

For the same reasons that caused the Court in *Bagwell* to require an impartial jury to determine issues of fact in contempt cases, a state habeas court cannot make an impartial review when it is the same court before which the initial contempt proceedings were conducted. Under such circumstances it hardly can impartially judge the adequacy of the record or other allegations of error. At the same time, whatever court is deemed to be sufficiently impartial to conduct a review should do so *de novo*. It does little good for the reviewing court to accept and rely upon facts which were determined by a court which was not impartial. Indeed, because of this strong possibility of self-interest and lack of impartiality, there is a particular due process interest in contempt cases to avoid a limited "abuse of discretion" review standard and to conduct a *de novo* review.

CONCLUSION

This case asks the Court to consider what limitations the due process clause places on the contempt power. Like the petitioner in *McNeil*, Mr. Chadwick "has been confined, potentially for life, although never determined to be in contempt by a procedure that comports with due process." *Id.* 407 U.S. at 251. It has been ten years since the Court decided *Bagwell*. During that period the lower federal courts and state courts have been loath to apply *Bagwell* and frequently have done so in ways inconsistent with the opinion. For the reasons set forth in this Petition Mr. Chadwick respectfully prays that his Petition for Writ of Certiorari be granted.

Respectfully submitted,

H. BEATTY CHADWICK
P.O. Box 23
Thornton, PA 19373
610-889-6695

APPENDIX A

J.S30035-03

2003 PA Super 330

H. BEATTY CHADWICK, Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JOHN DOUGLAS CAULFIELD, Appellee	:	
BARBARA CROWTHER CHADWICK, Intervenor	:	No. 3528 EDA 2002

Appeal from the Order entered November 7, 2002
In the Court of Common Pleas of DELAWARE County
CIVIL at No. 02-80287

BEFORE: HUDOCK, POPOVICH, and CAVANAUGH, JJ.

OPINION BY
CAVANAUGH, J.: Filed: September 8, 2003

¶ 1 H. Beatty Chadwick ("Chadwick"), appeals from the denial of his ninth state petition for a writ of *habeas corpus*.[1] We affirm, holding that, as with Chadwick's

[1] We note that the parties refer to the instant petition as Chadwick's eighth. If we include Chadwick's petition for *habeas* relief filed directly with our supreme court, this is Chadwick's ninth. We also

(Continued on following page)

previous petitions for a writ of *habeas corpus*, he has not presented any grounds for relief.

¶ 2 We reiterate the circumstances leading to Chadwick's present petition. In November 1992, Chadwick's wife, Barbara Crowther Chadwick ("Wife") filed for divorce. At a February 1993 support conference, Chadwick informed the trial court that he had transfered $2,502,000 of the marital estate to Maison Blanche, Ltd., a Gibraltar partnership, purportedly to satisfy an alleged debt.

¶ 3 Chadwick's wife thereafter filed an emergency petition to freeze the martial assets. At the hearing on the petition, three things were discovered. First, that a Maison Blanche principal had returned $869,106 to a United States bank account in the name of H. B. Chadwick. These funds were used to purchase three annuity contracts in the name of H. B. Chadwick. Second, that $995,726.41 was transferred into a Union Bank of Switzerland account in the name of H. B. Chadwick. Finally, that Maison Blanche never received $550,000 in stock certificates that Chadwick claimed to have transferred to an unknown barrister in England for forwarding to Maison Blanche. The trial court granted the emergency petition to freeze the marital assets on April 29, 1994.

¶ 4 In May 1994, Chadwick liquidated the annuity contracts and deposited the proceeds in a Panama bank, On July 19, 1994, Wife filed an emergency omnibus

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note that the docket does not apparently reflect any filings between Chadwick's fourth *habeas* petition, filed September 22, 1995, and his sixth *habeas* petition, filed on May 22, 1996. To maintain consistency with the plethora of other decisions on this matter, we will continue to refer to this petition as Chadwick's ninth petition.

petition for special relief. After a July 22, 1994 hearing, the trial court ordered Husband to return the $2,502,000 to an account under the court's jurisdiction, pay Wife's counsel fees, surrender his passport, and remain in Pennsylvania. We quashed Chadwick's appeal from this order as the order was interlocutory.

¶ 5 Chadwick failed to comply and Wife thereafter filed a petition to have him held in civil contempt. Contempt hearings were then scheduled for August 29, 1994, October 18, 1994, October 31, 1994. Chadwick failed to appear, although Chadwick's counsel was present at all three hearings. The trial court found Chadwick in civil contempt of the July 22, 1994 order and issued a bench warrant for his arrest on November 2, 1994. Chadwick appealed to this court from that order but we quashed, as the order was interlocutory in nature.

¶ 6 Chadwick fled the jurisdiction and was apprehended in Delaware on April 5, 1995. The trial court, following a hearing, found that Chadwick had the present ability to comply with the July 24, 1994 order, imprisoned him, and set bail at $3,000,000. Chadwick has not complied with the order or posted bail. This court, in an unpublished memorandum decision, affirmed the lower court's finding of contempt. ***See Chadwick v. Chadwick***, No. 1555 Philadelphia 1995, slip op. at 12 (Pa. Super. Aug. 22, 1996) (*per curiam*), *appeal denied,* 693 A.2d 965 (Pa. 1997) (affirming trial court's denial of Chadwick's petition to vacate the aforementioned November 2, 1994 order) [hereinafter ***Chadwick I***].

¶ 7 Chadwick thereafter filed eight state petitions for *habeas* relief and five federal *habeas* petitions. All petitions were denied. Chadwick filed this ninth petition for a

writ of *habeas corpus* on September 4, 2002. On October 3, 2002, Wife filed a petition to intervene.[2] That same day, Chadwick filed a petition requesting that the trial judge recuse himself. The trial court granted Wife's petition to intervene and denied Chadwick's petition for recusal. The trial court, after a hearing, dismissed Chadwick's petition for a writ of *habeas corpus* on November 7, 2002.[3] Chadwick, on November 14, 2002, filed an appeal and raises nine issues in his brief:[4]

> I. Whether confinement for "civil" contempt fails to meet the requirements of law where the confinement order directs the confinement of the contemnor "until a further hearing is held" and contains no condition upon which the contemnor may be released?
>
> II. Whether, assuming *arguendo* the existence of such a condition, the Record evidence is insufficient to establish beyond a reasonable doubt that the contemnor had the then present ability to comply therewith at the time of the contempt adjudication?
>
> III. Whether such confinement without affording notice and trial by jury under a standard of proof beyond a reasonable doubt

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[2] The trial court docket erroneously lists the filing date as September 4, 2002.

[3] The recording equipment was not functioning at the time of the hearing, unbeknownst to the parties and the court. A statement in absence of a transcript was filed by Chadwick and approved by the trial court. ***See*** PA.R.APP. P. 1923.

[4] We reordered Chadwick's issues to facilitate disposition. We acknowledge Chadwick's violation of PA.R.APP.P. 2116. ***See also Commonwealth v. Lutes***, 793 A.2d 949, 955 n.1 (Pa. Super. 2002).

causes the contemnor a deprivation of liberty without due process of law?

IV. Whether such confinement without affording the contemnor the right to judicial review of the order which directed his confinement causes the contemnor a deprivation of liberty without due process of law?

V. Whether such confinement for the purpose of coercing the payment of money causes the contemnor a deprivation of liberty without due process of law?

VI. Whether confinement for the alleged violation of an order a court lacks jurisdiction to issue causes the contemnor a deprivation of liberty without due process of law?

VII. Whether confinement for over ninety months for "civil" contempt of an order to pay over money into court in a pending divorce action is unreasonable and a violation of due process by reason of its excessive length?

VIII. Whether the former spouse of a person who challenges the lawfulness of his confinement in *habeas corpus* has a legally enforceable interest so as to be granted the right to intervene as a party in such proceedings?

IX. Whether the hearing judge should not have recused himself where he had previously in open court expressed his disbelief of a party as to a matter of fact material to the instant proceedings and where by actions toward such party over an eight-year

> period a reasonable person could conclude that such hearing judge was unable to preside impartially?

¶ 8 Chadwick primarily alleges that the trial court erred in denying his petition for a writ of *habeas corpus*. A petition for a writ of *habeas corpus* "lies to correct void or illegal sentences or an illegal detention, or where the record shows a trial or sentence or plea so fundamentally unfair as to amount to a denial of due process or other constitutional rights, or where for other reasons the interests of justice imperatively required it." ***Commonwealth ex rel. Butler v. Rundle***, 180 A.2d 923, 924 (Pa. 1962) (citation omitted). Pursuant to title 42, section 6502 of the Pennsylvania Consolidated Statutes, "[a]ny judge . . . may issue the writ of habeas corpus to inquire into the cause of detention of any person or for any other lawful purpose." 42 Pa.C.S.A. § 6502(a). The writ, if issued, directs the restraining authority to produce the person and state the "true cause of the detention." 42 Pa.C.S.A. § 6504.

¶ 9 Traditionally, a writ of *habeas corpus* is a civil remedy that tests the legality of the detention. ***See Commonwealth ex rel. Paulinski v. Isaac***, 397 A.2d 760, 762 (Pa. 1979). The writ can "never be used as a substitute for an appeal to test the correctness of the administration of the law in connection with a commitment, but where such an order is beyond the power or jurisdiction of the tribunal entering it, the one thereby detained may be released on habeas corpus." ***Commonwealth ex rel. Shearston v. Keeper of County Prison***, 145 A. 130, 131 (Pa. 1929) (*per curiam*) (citations omitted); ***accord Commonwealth ex rel. Penland v. Ashe***, 19 A.2d 464, 466 (Pa. 1941) (citations omitted). Precisely, "it is a collateral attack on the

process or judgment constituting the basis of the detention." ***Commonwealth ex rel. McGlinn v. Smith***, 24 A.2d 1, 5 (Pa. 1942) (quoting ***Goto v. Lane***, 265 U.S. 393, 401 (1924)).

¶ 10 We note that this is Chadwick's ninth petition for a writ of *habeas corpus*. We first acknowledge that the doctrine of *res judicata* does not apply to *habeas* proceedings. ***See Commonwealth ex rel. Bordner v. Russell***, 221 A.2d 177, 179 (Pa. 1966) (citations omitted); ***see also Sanders v. United States***, 373 U.S. 1, 8 (1963) (wherein Justice Brennan noted, "[c]onventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged.").

¶ 11 "However, in order to discourage repetitive petitions and to provide a degree of finality, it is settled that, absent unusual circumstances or an intervening change of law, a court may refuse to entertain a contention which has been fully considered on a prior petition for collateral relief." ***Bordner***, 221 A.2d at 179 (footnote and citations omitted); ***see Commonwealth ex rel. Stevens v. Myers***, 213 A.2d 613, 615 n.1 (Pa. 1965) (collecting cases); ***Commonwealth ex rel. Dandy v. Myers***, 187 A.2d 179, 180 (Pa. 1963) (*per curiam*) (affirming dismissal of petition for writ for *habeas corpus* as petitioner raised the same issue in two previous petitions).[5]

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[5] ***See also Sanders v. United States***, 373 U.S. 1, 15 (1963) (noting, "[c]ontrolling weight may be given to denial of a prior application for federal habeas corpus or [28 U.S.C.] § 2255 relief only if (1) the same ground presented in the subsequent application was determined adversely to the applicant on the prior application, (2) the prior determination was on the merits, and (3) the ends of justice would not be served by reaching the merits of the subsequent application.")

(Continued on following page)

> Moreover, even a contention which was not previously considered on the merits may be foreclosed if the question could have been raised on a prior petition but was deliberately withheld in order to preserve a claim for a subsequent petition. The "waiver" imputed under such circumstances has traditionally been articulated in terms of an "abuse of the writ."

Bordner, 221 A.2d at 179-80 (citations omitted); ***see also Commonwealth v. Cannon***, 275 A.2d 293, 295 (Pa. 1971).

¶ 12 When a trial court grants or denies a petition for a writ of *habeas corpus,* we review that decision for a manifest abuse of discretion. ***See Commonwealth v. Miller***, 787 A.2d 1036, 1038 (Pa. Super. 2001), *appeal denied*, 798 A.2d 1288 (Pa. 2002) (citation omitted). "Discretion is abused when the course pursued represents not merely an error of judgement, but where the judgement is manifestly unreasonable or where the law is not applied or where the

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(footnote omitted); ***Salinger v. Loisel***, 265 U.S. 224, 231 (1924) (collecting cases); ***United States v. Kress***, 944 F.2d 155, 162 (3d Cir. 1991), *cert. denied*, 502 U.S. 1092 (1992) (stating, "an abusive use of the writ may be prevented and a prior refusal to discharge on a like application may be made the authority for a refusal on subsequent ones.") (quoting ***Wells v. United States***, 158 F.2d 833, 834 (5th Cir.), *cert. denied,* 331 U.S. 852 (1947)). Of note is the ***Salinger*** court's comment regarding successive petitions for a writ of *habeas corpus*:

> In practice the rules we here have outlined will accord to the writ of habeas corpus its recognized status as a privileged writ of freedom, and yet make against an abusive use of it. As a further safeguard against abuse, the court, if not otherwise informed, may on receiving an application for the writ require the applicant to show whether he has made a prior application, and, if so, what action was had on it.

Salinger, 265 U.S. at 232.

record shows that the action is a result of partiality, prejudice, bias or ill will." ***Coker v. S.M. Flickinger Co.***, 625 A.2d 1181, 1185 (Pa. 1993) (citation omitted).

¶ 13 Thus, we examine whether the trial court manifestly abused its discretion in denying Chadwick's petition for a writ of *habeas corpus*. ***See Miller***, 787 A.2d at 1038. At the outset, we examine whether prior courts have fully entertained the claims that Chadwick presently raises, as this is his ninth petition for a writ of *habeas corpus*. ***See, e.g., Bordner***, 221 A.2d at 179. For issues not previously entertained, we examine whether the court that originally found Chadwick in contempt lacked jurisdiction or improperly violated Chadwick's constitutional rights. ***See Butler***, 180 A.2d at 924.

¶ 14 Chadwick, relying on case authority, first argues that the order of civil contempt is "legally improper" as it purportedly failed to state a condition for his release. The order in question states:

> H. Beatty Chadwick is held in Contempt of Court for willful violations of the Order of July 22, 1994. He is to be apprehended and incarcerated until a further hearing is held.

Chadwick v. Chadwick, No. 92-19535 (C.P. Delaware Nov. 3, 1994) (order dated November 2, 1994 holding Chadwick in contempt).[6] The July 22, 1994 order, which was filed on July 28, 1994, directed Chadwick to return the $2.5 million he transferred out of the United States.

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[6] As previously noted, Chadwick filed an appeal from this order, which was quashed by this court as interlocutory on February 16, 1995.

Chadwick also argues that even presuming that a condition exists, he lacked the ability to comply at the time the order was entered.[7]

¶ 15 Chadwick raised the aforementioned issues in his seventh state petition for *habeas* relief, filed directly with our supreme court on September 27, 1999. Chadwick raised the following issues:

> (1) Chadwick's imprisonment for failure to comply with a court order was contrary to due process because he was unable to comply with the order; (2) Chadwick was incarcerated without a jury trial or the presumption of innocence, contrary to due process; (3) the summary nature of the contempt proceedings deprived Chadwick of due process; (4) the order of imprisonment was facially invalid because it failed to specify a condition upon the fulfillment of which Chadwick's imprisonment would terminate; (5) the denial of Chadwick's right to appeal the adjudication of contempt and sanction of imprisonment violated his due process rights; (6) imprisonment for the nonpayment of money was a deprivation of due process; (7) civil confinement in excess of 50 months is a deprivation of due process; (8) imprisonment for violation of a court order issued without jurisdiction was a deprivation of due process; and (9) Chadwick's imprisonment was and still is punitive rather than coercive.

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[7] We note, however, that at the hearing on the instant petition, the trial court asked Chadwick "whether he intended to present evidence concerning his ability to comply with the Court's Order of July 22, 1994." Trial Order, Mar. 20, 2003 (approving statement in absence of transcript). Chadwick responded in the negative. ***See id.*** Thus, there is no evidence of his inability to comply.

Chadwick v. Janecka, No. Civ. 00-1130, 2002 U.S. Dist. LEXIS 10, 2002 WL 12292 (E.D. Pa. Jan. 3, 2002), *reversed,* 312 F.3d 597 (3d Cir. 2002), *cert. denied,* 123 S. Ct. 1914, 155 L. Ed. 2d 828, 71 U.S.L.W. 3678 (U.S. Apr. 28, 2003) (No. 02-1346) (summarizing Chadwick's seventh state *habeas* petition). Issues one and two of the instant petition correspond with issues (1) and (4) of his seventh state *habeas* petition. Our supreme court denied Chadwick's seventh request for a writ of *habeas corpus.* ***See Chadwick v. Goldberg***, No. 223 Misc. 1999 (Pa. Feb. 8, 2000) (*per curiam*).

¶ 16 Similarly, Chadwick, in his sixth state *habeas* petition, alleged that the trial judge, after a hearing, erred by finding that he was able to "comply with the purging condition of his civil contempt." ***Chadwick v. Hill***, No. 2192 Philadelphia 1996, slip op. at 4 (Pa. Super. Apr. 23, 1997) (*per curiam*) [hereinafter ***Chadwick II***]. The ***Chadwick II*** court concluded, based on the record, that the trial court did not err, noting that Chadwick made no effort to comply with the court's July 22, 1994 order.

¶ 17 Moreover, Chadwick implicitly conceded that a condition for his release exists. Chadwick, after he was apprehended, filed an Emergency Petition to Vacate the Sanctions of Incarceration and Bench Warrant, which was denied by the trial court on April 21, 1995. Chadwick thereafter appealed to this court, raising, among other issues, a claim as to "whether he had the present ability to comply with this [*i.e.* July 22, 1994] order." ***Chadwick I***, slip op. at 8. The ***Chadwick I*** court concluded that he had the ability to comply. ***See id.***

¶ 18 Given Chadwick's presentation of these arguments in prior petitions for a writ of *habeas corpus* and given this

court's and our supreme court's prior consideration of these arguments, we refuse to entertain his contentions. ***See Bordner***, 221 A.2d at 179; ***Stevens***, 213 A.2d at 615 n.1; ***Dandy***, 187 A.2d at 180. Our supreme court fully entertained Chadwick's first two arguments and found them lacking. The trial court did not manifestly abuse its discretion in denying Chadwick's ninth state petition for a writ of *habeas corpus*:

¶ 19 For the aforementioned reasons, we also find that our courts have previously entertained his third, fourth, fifth, sixth, and seventh issues, **Compare *Chadwick v. Janecka***, No. Civ. 00-1130, 2002 WL 12292 (E.D. Pa. Jan. 3, 2002), *reversed*, 312 F.3d 597 (3d Cir. 2002), *cert. denied*, 123 S. Ct. 1914, 155 L. Ed. 2d 828, 71 U.S.L.W. 3678 (U.S. Apr. 28, 2003) (No. 02-1346) (summarizing claims raised in Chadwick's seventh state petition for a writ of *habeas corpus*), ***with*** Appellant's Br. at 4-5 (stating the issues raised by the instant *habeas* petition). Simply, issues (2), (5), (6), (7) and (8) of his seventh state *habeas* petition are identical to the instant third, fourth, fifth, sixth, and seventh issues. Moreover, Chadwick has raised some of these issues in previous state petitions for a writ of *habeas corpus*. Given that Chadwick is merely reiterating claims that our supreme court, as well as prior courts, have previously addressed, we similarly refuse to entertain these contentions. ***See Bordner***, 221 A.2d at 179; ***Stevens***, 213 A.2d at 615 n.1; ***Dandy***, 187 A.2d at 180. We find no manifest abuse of discretion in the trial court's denial of Chadwick's latest petition for a writ of *habeas corpus*.

¶ 20 We, however, comment on Chadwick's seventh allegation of error. In raising this issue in his sixth state petition for a writ of *habeas corpus,* Chadwick had urged

the court to adopt a test showing that "incarceration may become punitive where 'the contemnor has shown there is no realistic possibility or [a] substantial likelihood that continued confinement will [ever] accomplish its coercive purpose.'" ***Chadwick II***, slip op. at 5 (quoting ***Morgan v. Foretich***, 564 A.2d 1, 4 (D.C. 1989)). In rejecting this argument, the ***Chadwick II*** court stated:

> While it seems reasonable that at some point a temporal benchmark should be adopted to determine when contempt incarceration becomes impermissibly punitive we think that it is for our high court to make such a determination.

Chadwick II, slip op. at 6. Chadwick, however, did not appeal to our supreme court from the denial of his sixth petition for *habeas* relief.

¶ 21 Although we refuse to entertain Chadwick's seventh issue, we find our reasoning in ***Chadwick II*** persuasive. Lacking definitive guidance from our high court, we will not adopt any test that would define "when contempt incarceration becomes impermissibly punitive." ***Id.***

¶ 22 Moreover, Chadwick, before a federal court, had argued "that the state courts failed to recognize that his confinement has ceased to be coercive and that, as a consequence, he cannot be held in custody any longer unless he is convicted and sentenced for criminal contempt." ***Chadwick v. Janecka***, 312 F.3d 597, 607 (3d Cir. 2002), *cert. denied*, 123 S. Ct. 1914, 155 L. Ed. 2d 828, 71 U.S.L.W. 3678 (U.S. Apr. 28, 2003) (No. 02-1346). The Court of Appeals for the Third Circuit holding "that the state courts' decision – denying *habeas* relief because Mr. Chadwick has the present ability to comply with the court order – was neither contrary to nor an unreasonable

application of clearly established Federal Law, as determined by the Supreme Court of the United States" bolsters our determination that Chadwick's confinement is not unsound. ***Id.*** (internal quotation marks and citation omitted).

¶ 23 Finally, we address Chadwick's last two issues. Chadwick alleges that the trial court erred by allowing Wife to intervene. In support, Chadwick presents a highly technical argument that Wife lacks a legally enforceable interest in the proceedings and that Wife failed to demonstrate that if the writ was granted, she would suffer an injury. Chadwick also argues that the hearing judge in this matter erred in not recusing himself.

¶ 24 Wife first counters that Chadwick failed to properly appeal from the order granting Wife the right to intervene and the order denying Chadwick's motion to recuse. Wife, on the merits, argues that pursuant to PA.R.C.P. 2327(4), she has the right to intervene. Wife also submits that Chadwick failed to meet his burden that the hearing judge was biased, prejudiced, or unfair.

¶ 25 We find it appropriate to address the merits of Chadwick's last two issues. ***Cf. K.H. v. J.R.***, 826 A.2d 863, 871 (Pa. 2003) (holding that "a notice of appeal filed from the entry of judgment will be viewed as drawing into question any prior non-final orders that produced the judgment."); ***Krieg v. Krieg***, 743 A.2d 509, 511 (Pa. Super. 1999) (noting that denial of a pretrial motion to recuse is not an appealable interlocutory or collateral order); ***In re Manley***, 451 A.2d 557, 559 n.5 (Pa. Super. 1982) (stating,

"[o]rdinarily, an order permitting intervention is interlocutory and not appealable.") (citations omitted).[8] Although Chadwick's notice of appeal only indicated an appeal from the order of November 7, 2002, that order flows from the trial court's prior grant of Wife's motion to intervene and the denial of Chadwick's motion to recuse.

¶ 26 On the merits, we find against Chadwick. With respect to Chadwick's objection to the trial court's grant of Wife's motion to intervene, we note that Chadwick raised a similar issue before the Court of Appeals for the Third Circuit. ***See Chadwick***, 312 F.3d at 601. Chadwick argued that Wife, as intervenor in the court below, lacked standing to pursue an appeal.

¶ 27 The Third Circuit disagreed, finding that Wife clearly met all the requirements of standing, thereby allowing her, as intervenor, to proceed on appeal. Specifically, Wife demonstrated an injury in fact, causation, and redressability. ***See id.*** at 602. The Third Circuit noted that Wife has a direct financial interest in the outcome of the action. If a writ of *habeas corpus* was granted, the court reasoned:

> Chadwick will be released from jail and will be relieved of the pressure to return this money for equitable distribution. [Wife's] injury is unquestionably traceable to Mr. Chadwick's refusal to comply with the state court order under which he is being held. [The writ] would erase the effect of the state court order requiring the return of the

[8] We acknowledge that the ***K.H.*** decision was issued after the trial court's Rule 1925(b) decision.

> funds and would significantly reduce [Wife's] share of the marital estate.

Id.

¶ 28 In the courts of this Commonwealth, Pennsylvania Rule of Civil Procedure 2327(4) allows Wife to intervene if she has a "legally enforceable interest" by a resolution of this action. Similar to the Third Circuit, we find that Wife has a legally enforceable interest in the proceedings. If we were to reverse the trial court's denial of Chadwick's petition for a writ of *habeas corpus*, the end result would be a greatly diminished marital estate, thereby injuring Wife. ***See id.*** Thus, Wife has an interest in ensuring the continued enforcement of the finding of contempt. Chadwick's argument that Wife has no legally enforceable interest in this proceeding must fail.

¶ 29 With respect to Chadwick's argument that the hearing judge erred by failing to recuse himself, we consider the following:

> It is the burden of the party requesting recusal to produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially. As a general rule, a motion for recusal is initially directed to and decided by the jurist whose impartiality is being challenged. In considering a recusal request, the jurist must first make a conscientious determination of his or her ability to assess the case in an impartial manner, free of personal bias or interest in the outcome. The jurist must then consider whether his or her continued involvement in the case creates an appearance of impropriety and/or would tend to undermine public confidence in the judiciary. This is a personal and unreviewable decision

> that only the jurist can make. Where a jurist rules that he or she can hear and dispose of a case fairly and without prejudice, that decision will not be overruled on appeal but for an abuse of discretion. In reviewing a denial of a disqualification motion, we recognize that our judges are honorable, fair and competent.

Commonwealth v. Abu-Jamal, 720 A.2d 79, 89 (Pa. 1998) (citations omitted); ***accord Commonwealth v. Tharp***, ___ A.2d ___, 2003 Pa. LEXIS 1159, 2003 WL 21508379 (Pa. 2003).

¶ 30 Chadwick argues that the hearing judge has demonstrated an eight-year history of enmity against him. Wife disagrees.[9] Simply, Chadwick has failed to "produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially." ***Abu-Jamal***, 720 A.2d at 89 (citations omitted). Although the transcript of the hearing was unavailable, after examining the statement submitted in lieu of the transcript, we did not find an abuse of discretion warranting recusal. That the hearing judge ruled adversely to Chadwick's numerous petitions is not, on this record, a *per se* indication of the judge's partiality.

¶ 31 Upon our full entertainment of Chadwick's issues and arguments, we find that the trial court did not manifestly abuse its discretion in denying Chadwick's ninth petition for a writ of *habeas corpus*. Our courts have fully entertained, in Chadwick's prior petitions for a writ of

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[9] We note in passing that Wife relied, in part, on a vacated decision. ***See Mun. Publications, Inc. v. Snyder***, 469 A.2d 1084 (Pa. Super. 1983), *vacated sub. nom.* ***Mun. Publications, Inc. v. Court of Common Pleas of Philadelphia County***, 489 A 2d 1286 (Pa. 1985).

habeas corpus, his first seven issues. We also note that Chadwick failed to present evidence of his alleged inability to comply with the trial court's July 22, 1994 order. Furthermore, lacking the guidance of our high court, we will not adopt any test that determines when incarceration for civil contempt becomes impermissibly punitive. Moreover, the trial court did not err in granting Wife's motion to intervene, as she has a legally cognizable interest in this proceeding. Finally, we find no abuse of discretion in the trial court's denial of Chadwick's motion to recuse.

¶ 32 Order affirmed.

APPENDIX B

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

H. BEATTY CHADWICK	**: NO. 02-80287**
v.	**:**
	:
JOHN DOUGLAS CAULFIELD Warden, George W. Hill Correctional Facility	**:**

OPINION

CLOUSE, P.J. DATE: Feb. 3, 2003

A Petition for Writ of Habeas Corpus was filed by H. Beatty Chadwick on September 4, 2002,[1] contending that the Order of July 22, 1994, directing Petitioner to pay 2.5 Million ($2,500,000) Dollars into a Court administered account, and the Order of November 2, 1994, adjudicating Petitioner in contempt and directing his incarceration, were improperly entered and thus, his imprisonment is unlawful. A hearing was held before The Honorable

[1] On October 3, 2002, Petitioner H. Beatty Chadwick also filed a Petition for Recusal which, after a hearing on October 10, 2002 was denied by the Court by Order dated October 15, 2002. A Petition by Barbara Crowther Chadwick to Intervene in the Matter of the Petition for Habeas Corpus filed by H. Beatty Chadwick, was filed, an Answer filed thereto, oral argument having been held thereon, also on October 10, 2002, the Court, by Order dated October 15, 2002, granted said Petition. Although Petition in his Statement of Matters Complained of On Appeal, contends that the Court erred in entering the said referenced Orders, same are not on appeal herein.

Kenneth A. Clouse on October 10, 2002.[2] Thereafter, Intervenor Barbara Crowther Chadwick filed a Brief in Opposition to said Petition, and Petitioner filed a Reply Memorandum. The Court, by Order dated November 7, 2002, dismissed said Petition for Habeas Corpus.

Appellant/Petitioner has now filed a Notice of Appeal to the Superior Court of Pennsylvania of the Court's November 7, 2002 Order.

Petitioner contends that the Court committed an error of law in dismissing the Petition for Writ of Habeas Corpus inasmuch as the confinement order at issue in this civil contempt did not contain a condition which would result in the release of Appellant; that even if it be assumed, arguendo, that the confinement order did contain a condition, the Court committed an error of law in dismissing the said Petition since the record before the Court at the time of the Order was entered fails to demonstrate beyond a reasonable doubt that Petitioner had the then present ability to perform such a condition; and that the Court committed an error of law and also abused its discretion in dismissing the said Petition where the Petitioner's ninety (90) month confinement far exceeded any period which would reasonably be coercive in nature.

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[2] The hearing was held using the videoconferencing equipment in a room designated for such at the Delaware County Court House. The Court has just been apprised that apparently the recording machine was not functioning during the hearing, unknown to the parties participating; the hearing consisted solely of legal argument by counsel and Appellant/Petitioner, pro se. No transcript of said hearing, therefore, is available and hence, is not submitted with the record herewith. The Court has included in the record all exhibits entered at the October 10, 2002 hearing.

Notwithstanding Petitioner's contention to the contrary, the Court's Order of July 22, 1994 clearly contains conditions which would result in the release of Petitioner, and the evidence clearly supports a finding that Petition Husband is able to comply with the July 22, 1994 Order, and therefore, his incarceration has not become punitive. Petitioner bases his request for habeas corpus relief on the argument that because there is no realistic possibility or likelihood that continued confinement will accomplish the coercive purpose of having him produce the assets in question, his confinement has become punitive in nature and, therefore, he should be released. While other jurisdictions have adopted such a standard, the Pennsylvania Courts have not. Rather, the Supreme Court of Pennsylvania has established that "the only limitations on civil-contempt sentences are that they must be conditional and they may not exceed the period in which the contemnor is able to comply[.]" *In Re Martorano*, 464 Pa. 66, 84, 346 A.2d 22, 31 (1975). In Pennsylvania, the defining characteristic of civil contempt is that it "coerces with [a] conditional or indeterminate sentence of which the contemnor may relieve himself by obeying the court's order[.]" *Ingebrethsen v. Ingebrethsen*, 43 Pa.Super. 256, 260-61, 661 A.2d 403, 405 (1995) quoting *Schnabel Ass'n. v. Building and Constructions Trades Council*, 338 Pa.Super. 376, 385-86, 487 A.2d 1327, 1332 (1985)). *Accord*, *Martorano*, 464 Pa. at 78-79, 346 A.2d at 28 (purpose of civil contempt is to coerce with an indeterminate sentence of which contemnor may relieve himself by obeying the court's order). Because the evidence presented to the trial court established that Appellant has the present ability to comply with the Order, and Appellant has failed, to date, to present any credible evidence to the contrary, Appellant's imprisonment remains coercive and should continue

until he complies with the July 22, 1994 Order or until external factors render compliance with the Order impossible.

As the lower court concluded, Petitioner's claim that he does not have the ability to obey Judge Labrum's July 22, 1994 Order completely lacks credibility. Throughout the lower court proceedings, the Court found that Intervenor/Wife established through witnesses that Petitioner remains in control of the fund she fraudulently transferred and is, in fact, able to comply with the July 22, 1994 Order. By way of illustration, the Court found that Intervenor/Wife clearly established at the July 22, 1994 hearing before Judge Labrum that, less than sixty (60) days after the initial transfer of the 2.5 Million ($2,500,000) Dollars to Maison Blanche, Eight Hundred Sixty-Nine Thousand One Hundred and Six ($869,106) Dollars was transferred back to the United States to an account at Chemical Bank in New York for the benefit of "H.B. Chadwick". Additionally, the Court found that Intervenor/Wife established at the various hearings that Petitioner used these funds to purchase three (3) annuity contracts in the name of H.B. Chadwick which he liquidated and the proceeds from which he subsequently deposited in Banco Mercantil del Istmo in Panama. [N.T. 7/22/94, pp. 24, 33-60]. Although Petitioner denied signing anything requesting the liquidation of the annuity contracts, his signature appeared on letters requesting the liquidation, and those signatures were guaranteed on two (2) separate occasions by an employee of PNC Bank. [N.T. 7/22/94, Exhibit W-14; N.T. 8/29/94, pp. 8-12]. That PNC Bank employee positively identified Petitioner at the hearings as the individual who had requested the guaranteed signature. Furthermore, on one of these occasions, the PNC employee obtained a photo

static copy of Petitioner's driver's license containing his photograph. [N.T. 8/29/94, pp. 10-12].

At every hearing held in this matter, including the May 30 and June 3, 1996 hearings, Petitioner has failed to even acknowledge the overwhelming evidence presented to the trial court by Intervenor/Wife. Although Petitioner has admitted to transferring the 2.5 Million ($2,500,000) Dollars to Maison Blanche, purportedly to satisfy a debt, he has failed to rebut any of the evidence showing the transfer of substantial portion of the funds back to the United States into accounts in his name. Significantly, he has also completely failed to offer any information which would help trace the disposition of the transferred funds. If Petitioner did, in fact, transfer the 2.5 Million ($2,500,000) Dollars to satisfy a debt to Maison Blanche, there is absolutely no explanation for his failure and refusal to produce any documentation and/or information to help trace the disposition of those funds. At every hearing held in this matter, Petitioner has been given the opportunity to present evidence to support his theory as to what happened to the funds. To date, Petitioner has failed to present any evidence, except for his own testimony, which has been found to be completely incredible, with respect to the disposition of the funds.[3]

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[3] As noted by the trial court in its Opinion and Order dated September 20, 1995:

> In each of the hearings on petitioners writ of habeas corpus, petitioner attempted to show the Court that he did not have the ability to obey Judge Labrum's July 22, 1994 order due to the fact that he did not have control of the disputed funds. The Court found that Petitioner's testimony in each of those hearings was not credible and bordered on ridiculous. [Wife], through witnesses, was able to establish that

(Continued on following page)

Moreover, Petitioner has not even made a good faith effort to comply with other aspects of the July 22, 1994 Order. Aside from returning the 2.5 Million ($2,500,000) Dollars, the Order directed that Petitioner surrender his passport, cooperate in selling the marital residence and enjoined him from leaving the jurisdiction and from further assigning and dissipating marital assets. Respondent alleges in his Second Omnibus Petition for Contempt and for Special Relief that since the entry of the Order, Mr. Chadwick has failed to surrender his passport; refused to cooperate in the sale of the marital residence; fled the jurisdiction and took up residence in Delaware; transferred title to property located in Michigan from his own name to joint names of himself and his son, William Chadwick and refused to sign authorizations, despite a Court Order that he do so, which might aid Intervenor/Wife in trying to locate the missing funds. Moreover, in April, 2001, this Court, in an effort to compromise the differences between the parties offered to let Petitioner out of prison on the sole condition that he sign authorizations and allow former President Judge Catania to attempt to trace the funds, acting as guardian ad litem. Petitioner absolutely refused to sign the authorizations unless he was released from prison.

The evidence presented by Intervenor/Wife at every hearing in this matter clearly established that Petitioner Chadwick has failed to comply with any of the provisions of the July 22, 1994 Order; his failure to comply has been willful and demonstrates his disdain for the authority of

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husband's alleged payment of a debt was merely a sham designed to mislead the Court and deprive [Wife] to her right of equitable distribution of marital property.

the Court. Although having ample opportunities to do so, Appellant/Petitioner has failed to present any credible evidence to the contrary. Accordingly, this Court finds that Petitioner's confinement has not become punitive since he is able to comply with the July 22, 1994 Order.

Even if this Court were to adopt the "realistic possibility" standard in determining whether Petitioner's incarceration remains coercive, Petitioner has failed to meet his burden of proof. Some courts in other jurisdictions have held that even where a contemnor has the ability to comply with an order, confinement may turn punitive if "the contemnor has shown there is no 'realistic possibility' or 'substantial likelihood' that continued confinement will accomplish its coercive purpose." *See e.g., Morgan v. Foretich*, 564 A.2d 1, 4 (D.C. 1989), *Simkin v. United States*, 715 F.2d 34 (2d Cir. 1983). These cases make clear that the burden is on the contemnor to show that no such realistic possibility exists and that the judge need not accept as conclusive a contemnor's avowed intention never to comply. *Simkin*, 715 F.2d at 37. As explained by the Court in *Simkin*:

> Even if the judge concludes that it is the contemnor's present intention never to testify, that conclusion does not preclude the possibility that continued confinement will cause the witness to change his mind . . . What is required of the judge is a conscientious effort to determine whether there remains a realistic possibility that continued confinement might cause the contemnor to testify. The burden is properly placed on the contemnor to demonstrate that no such realistic possibility exists. As long as the judge is satisfied that the coercive sanction might yet

> produce its intended results, the confinement may continue.

Id. Accord Morgan, 564 A.2d at 4-5.

Moreover, as discussed in *Simkin* and *Morgan*, because of the predictive nature of the inquiry, a trial judge must have virtually unreviewable discretion in reaching the conclusion of whether the confinement has ceased to be coercive. As noted by the *Morgan* Court:

> Given the predictive nature of the inquiry, it is hard enough for the trial court to make a sound judgment. In most circumstances, therefore, it is likely to be even harder for appellate judges, who have not observed the contemnor testify, to assess the likelihood of compliance with the trial court's order.

Morgan, 564 A.2d at 5. *See also*, *Simkin*, 715 F.2d at 38 (same); *Catena v. Seidl*, 343 A.2d 744, 747 (N.J. 1975) (same).

Other factors which are relevant to, but in no way determinative of, the Court's determination are the age and health of the contemnor, the length of incarceration, and the contemnor's own stated reasons for refusing to comply. *Morgan*, 564 A.2d at 5. However, "[e]ven these other factors . . . may not provide a clear indication whether there is no realistic possibility that continued incarceration will coerce compliance with the court's order." *Id. See also*, *Catna*, 343 A2d at 747 (while age, health and the length of incarceration may be factors to be weighed, the critical question is whether further confinement will serve any coercive purpose).

In the instant case, at this time, Petitioner/Appellant has been confined for nearly ninety (90) months. However, this is in no way indicative of the coercive effect of continued incarceration. The mere passage of time does not transform coercive contempt into punitive contempt. *King v. Dept. of Soc. and Health Servs.*, 756 P.2d 1303 (Wash. 1998). *See also Sanders v. Shephard*, 541 N.E.2d 1150 (Ill. App. 1989) (Contemnor imprisoned for 19 months); *Catena v. Seidl*, 343 A.2d 744 (N.J. 1975) (witness held in civil contempt and imprisoned for five years for refusing to testify); *Morgan*, 54 A.2d 1 (mother held in civil contempt and imprisoned for over two years for refusal to comply with court order and divulge location of daughter).

Additional testimony at prior hearings before this Court has revealed that Petitioner Chadwick is far from a broken man. He has filed numerous pro se petitions in this Court as well as the Pennsylvania Superior Court, the Pennsylvania Supreme Court and even the United States District Court for the Eastern District of Pennsylvania. He also helped at least one other inmate file his own petition for writ of habeas corpus and has managed to retain at least twelve (12) different attorneys to represent him since incarceration.

Finally, the Court finds that Petitioner's failure to comply with the July 22, 1994 Order is based solely upon his desire to deprive Intervenor/Wife of her portion of the marital assets. The instant case is very distinguishable from cases such as *Morgan*, *Simkin* and *Cantena* where the contemnor's refusal to comply with the court order was based upon the fear of harm or danger to a child (*Morgan*) or to himself (*Simkin*, *Catena*). It naturally follows that a person is more likely to remain in contempt and never comply with a court order if he believes that compliance

would cause bodily arm or injury to oneself or to a child. In the present matter, the only possible repercussion of Petitioner's compliance with the Order is that Intervenor/Wife will receive her fair share of the marital estate; Petitioner's incentive to continue to refuse to comply with the Court Order is much less, and the likelihood that his continued incarceration will eventually cause compliance is that much greater.

The trial court clearly found after the hearings held in this matter that "the coercive sanctions imposed may yet cause the contemnor to ultimately comply with Judge Labrum's July 22, 1994 Order, and therefore, Petitioner's contempt is not punitive in nature . . . " The Court had the benefit of seeing and hearing Petitioner testify and determined that his confinement remained coercive. Moreover, the Court clearly concluded that the evidence presented regarding the other factors, such as Petitioner's age, health and length of incarceration, did not support a finding that his confinement has become punitive.

Petitioner further contends that the Court erred in dismissing the said Petition where the Petitioner was not afforded a jury trial and the rights of a criminal accused at the time of his adjudication in contempt.

The Court concludes that there is no right to a jury trial or to the other safeguards of the Sixth Amendment of the United States Constitution in a matter of civil contempt in which the contemnor is in prison for failure and refusal to comply with a Court Order. Petitioner claims that as a civil contemnor, who is refusing to comply with a Court Order, he should be afforded the same protections provided to an accused in criminal proceedings, specifically those under the Sixth Amendment. The Sixth

Amendment provides, in part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . " U.S. CONST. Amend. VI. Petitioner has argued to the various courts involved in this case, and is once again attempting to argue to this Court, that his imprisonment is a criminal sanction and that, therefore, he should be afforded the same protections provided to an accused in a criminal action. The law is clear, however, that where a sentence of imprisonment is a result of civil contempt and it is conditional in nature, indictment and jury trial are not constitutionally required. *Shillitani v. United States*, 384 U.S. 364, 365 (1966). As noted by the Court in *Shillitani*, it is not the fact of punishment, but rather its character and purpose that serve to distinguish civil contempt from criminal contempt. *Id.* at 369 (citing *Gompers v. Bucks Stove & Range Company*, 221 U.S. 418, 441 (1911). "There can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt." *Id.* at 370. It is the conditional nature of the imprisonment, which is based entirely upon the contemnor's continued defiance, that justified holding civil contempt proceedings without the need for indictment and jury. *Id.* at 370-71.

In his Petition, Petitioner argues that the distinction between civil contempt and criminal contempt is irrelevant and/or inapplicable in this matter. The Court concludes that the instant case is clearly civil in the nature of the contempt in question, and the law does not support his argument. In fact, Petitioner fails to cite any civil contempt case that supports his position. Rather he relies exclusively on criminal contempt cases. *Bloom v. State of Illinois*, 391 U.S. 194 (1968), *Harris v. United States*, 382

U.S. 162 (1965), *United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994). One of the many misrepresentations Petitioner presents in his Petition is that through its decision in *United Mine Workers*, the Supreme Court extended the law so as to provide a civil contemnor with the same rights provided to a criminal contemnor, e.g., a jury trial. Petitioner suggests that in *United Mine Workers*, a full panoply of procedural safeguards were required because it involved a substantial fine. This is a complete misstatement. In *United Mine Workers*, the U.S. Supreme Court specifically concluded that the serious contempt fines imposed were "criminal and constitutionally could not be imposed absent a jury trial." 512 U.S. at 32.

Moreover, in *United Mine Workers*, the Court took great pains to explain the distinction between civil and criminal contempt. Criminal contempt is a crime in the ordinary sense . . . and criminal penalties may not be imposed on someone who has not been afforded the protections that the constitution requires of such proceedings . . . " In contrast, civil contempt sanctions, or those penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. Neither a jury trial nor proof beyond a reasonable doubt is required." *Id.* at 12.

Appellant/Petitioner's confinement in the Delaware County prison is for civil contempt. No fine has been assessed against Appellant/Petitioner, and no jail term has been imposed. Petitioner is free to leave the prison as soon as he complies with terms of the July 22, 1994 Order. His confinement is not punishment. Therefore, there is no

requirement that he be afforded a jury trial or any other rights available to an accused in a criminal proceeding. The trial court found, after reviewing all of the evidence presented to it after several days of hearings, that Petitioner fraudulently transferred 2.5 Million ($2,500,000) Dollars in marital assets in order to defeat Intervenor/Wife's economic claims associated with the divorce action. The Court further determined that Petitioner Chadwick has had, at all times, control over the funds and the ability to comply with the July 22, 1994 Order requiring him to return those funds. Accordingly, the Court concludes that the provisions of the Sixth Amendment are inapplicable to this case and cannot serve as a basis for this Court to afford the requested relief.

The Court further concludes that Petitioner's continued incarceration for failure and refusal to comply with the July 22, 1994 Order does not violate the Eighth Amendment since the purpose of the incarceration is to coerce him into compliance with the Order. Petitioner's claim that his continued imprisonment for failure to comply with a Court Order should be limited by provisions of the Eighth Amendment is similarly unsupported by well established law. Once again, the determinative factor with respect to this issue is the purpose served by Petitioner's incarceration. Because his incarceration is for coercive purposes, and not "punishment", the Eighth Amendment is not implicated, and his incarceration cannot be considered "cruel and unusual punishment." *Austin v. United States*, 509 U.S. 602, 610 (1993).

The Eighth Amendment provides: "Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishment inflicted." As recognized by the United States Supreme Court, "An examination of the

history of the Amendment and the decisions of this Court construing the proscription against cruel and unusual punishment confirms that it was designed to protect those convicted of crimes." *Ingraham, et al. v. Wright, et al.*, 430 U.S. 651, 664 (1977). In the few cases where the United States Supreme Court has addressed the issue of whether the cruel and unusual punishment prohibition provided for in the Eighth Amendment is applicable to civil remedies, that Court has found the Eighth Amendment inapplicable. *See, e.g., Uphaus v. Wyman*, 360 U.S. 72 (1959) (holding that incarceration of civil contemnor pending compliance with subpoena is not subject to the Eighth Amendment); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893) (holding the Eighth Amendment inapplicable to deportation of aliens since deportation is not a punishment for crime).

The United States Supreme Court addressed the application of the Eighth Amendment to the civil contempt remedy of imprisonment in *Uphaus v. Wyman*. In *Uphaus*, the petitioner was confined for his failure and refusal to produce documents called for in subpoenas. Quoting *Green v. United States*, 356 U.S. 165, 197 (1958) (dissenting opinion), that Court explained:

> Before going any further, perhaps it should be emphasized that we are not at all concerned with the power of courts to impose conditional imprisonment for the purpose of compelling a person to obey a valid order. Such coercion, where the defendant carries the keys to freedom in his willingness to comply with the court's directive, is essentially a civil remedy designed for the benefit of other parties and has quite properly been exercised for centuries to secure compliance with judicial decrees.

Id. at 81. On this basis, the *Uphaus* Court specifically stated that if the petitioner continued to disobey the subpoena, his continued incarceration to secure compliance with the subpoena would be constitutionally proper. *Id.* at 82.

The Court concludes that the purpose of Petitioner's incarceration is to coerce his compliance with the July 22, 1994 Order. His incarceration is not punishment, and therefore, the Eighth Amendment is inapplicable to this matter. Just as in *Uphaus*, if Petitioner continues to disobey the Court's Order, then his continued incarceration to secure compliance with that Order is constitutionally proper.

Appellant/Petitioner Chadwick further contends that the Court erred in dismissing the said Petition where he was not afforded proper notice of the hearing at which his contempt was adjudicated, and the hearing was not conducted in accordance with the required standards of due process; that the Court erred in dismissing the said Petition where the he was denied the right to appeal the adjudication of contempt and imprisonment; and that the Court erred in dismissing the said Petition where the purpose of the his confinement was to coerce the payment of money.

The Court concludes that Petitioner's continued incarceration for his failure and refusal to comply with the July 22, 1994 Order does not violate any rights secured by the Fourteenth Amendment to the United States Constitution.

The Fourteenth Amendment to the United States Constitution prohibits a state from depriving a person of life, liberty or property without due process of law.

Petitioner has not been deprived of any protected rights without due process of law. His incarceration results solely from his continuing refusal to comply with the July 22, 1994 Order. He holds the keys to his jail cell, and he can free himself at any time. The procedural history of this case makes clear that he has been afforded complete due process of law.

As already noted, by Order dated October 31, 1994, Petitioner was adjudicated in contempt of the July 22, 1994 Order, and the Court ordered his incarceration. Petitioner appealed the October 31, 1994 Order, and the Superior Court quashed the appeal on the basis that the order was interlocutory. He subsequently filed an Emergency Petition for Vacation of Sanctions of Incarceration and Bench Warrant which was denied by the trial Court on April 21, 1995. Petitioner appealed the April 21, 1995 Order, and the Order was affirmed by the Superior Court by Memorandum and Order dated August 22, 1996. On April 8, 1997, the Supreme Court of Pennsylvania denied Petitioner's Petition for Appeal of the August 22, 1996 Order, and he filed the Petition for a Writ of Certiorari to the United States Supreme Curt which was denied. In addition to appealing the April 21, 1995 Order, Petitioner also filed with the Supreme Court of Pennsylvania a Petition for Writ of Mandamus seeking his release from prison, and that Petition was denied by Order dated September 24, 1996.

Further, the October 31, 1994 Order was predicated on Petitioner's violation of the July 22, 1994 Order. As already noted, the July 22, 1994 order was entered after a full hearing at which Petitioner appeared and gave testimony, and the Order was served on him at the conclusion of the hearing. Prior to the October 31, 1994 adjudication

of contempt, three (3) hearings were held in August and October of 1994 concerning Petitioner's compliance with the July 22, 1994 Order. Despite having notice of all three (3) hearings, and having been served with a subpoena to appear at the October 31, 1994 hearing, Petitioner failed and refused to attend any of the hearing. He was, however, represented by counsel at each of these hearings. [April 12, 1995, pp. 7-10].

The Court concludes that the July 22, 1994 and October 31, 1994 Orders were not attempts by the Court to use its contempt powers to "collect" money from Petitioner. The July 22, 1994 and October 31, 1994 Orders do not require Petitioner to pay money as if he had been fined; rather, they require him to return money ($2.5 million in marital assets) which he fraudulently transferred outside the United States. It was well within the Court's powers to adjudicate Petitioner in civil contempt of the July 22, 1994 Order and in doing so, the Court provided him with due process of the law.

Further, the right to appeal is not a fundamental right. The Pennsylvania Rules of Appellate Procedure permit an appeal as of right to the Superior Court only from a final order of a lower court. Pa.R.A.P.341(a). "A final order is any order that . . . disposes of all claims or of all parties[.]" Pa.R.A.P. 341(b)(1). The July 22, 1994 Order which required, inter alia, the return of the $2.5 million in marital assets, was not a final order but rather an interlocutory order and, therefore, non-appealable pursuant to Rule 341 of the Pennsylvania Rules of Appellate Procedure. It was an Order properly entered by the Court pursuant to the Court's inherent powers granted under the Pennsylvania Divorce Code. Petitioner has not been

deprived of his right to appeal a final decision in the divorce action.

Further, between all of Petitioner's appeals and petitions for writ of habeas corpus, Petitioner has had the opportunity to contest the validity of the July 22, 1994 Order. Moreover, ever since Intervenor/Wife established Petitioner's ability to comply with the July 22, 1994 Order, he has been provided with an opportunity to comply with the July 22, 1994 Order and/or to present evidence as to his alleged inability to comply with the Order at each of the subsequent habeas corpus hearings held before the Court and at the regular hearings held by the Court to offer him the opportunity to purge himself of the contempt. Notwithstanding same, Petitioner has failed to present any evidence in support of his contention that he is unable to comply with the Court Order.

For all the aforementioned reasons, the Court's Order of November 7, 2002 dismissing the Petition for Habeas Corpus was properly entered.

BY THE COURT:

/s/ [ILLEGIBLE]
KENNETH A. CLOUSE, P.J.

APPENDIX C

J. S30035/03

H. BEATTY CHADWICK,	:	IN THE
Appellant	:	SUPERIOR
	:	COURT OF
v.	:	PENNSYLVANIA
JOHN DOUGLAS CAULFIELD,	:	
	:	
Appellee	:	
BARBARA CROWTHER CHADWICK,	:	
	:	
Intervenor	:	No. 3528 EDA 2002

ORDER

AND NOW, this 12th day of November, 2003, IT IS HEREBY ORDERED:

THAT the application filed September 22, 2003, requesting reargument/reconsideration of the decision dated September 8, 2003, is DENIED.

PER CURIAM

APPENDIX D

IN THE COURT OF COMMON PLEAS
OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

H. BEATTY CHADWICK	:	**NO. 02-80287**
	:	
v.	:	
	:	
JOHN DOUGLAS CAULFIELD	:	
Warden, George W. Hill	:	
Correctional Facility	:	

ORDER

AND NOW, this 7th day of November, 2002, upon consideration of H. Beatty Chadwick's Petition for Habeas Corpus, a hearing having been held thereon, Intervenor Barbara Crowther Chadwick's Brief in Opposition to said Petition, and Petitioner's Reply Memorandum, it is hereby ORDERED that said Petition is DISMISSED.

BY THE COURT:

/s/ Kenneth A. Clouse
KENNETH A. CLOUSE, P.J.

APPENDIX E

IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

H. BEATTY CHADWICK,	: No. 884 MAL 2003
Petitioner	:
v.	: Petition for Allowance of Appeal from the Order of the Superior Court
JOHN DOUGLAS CAULFIELD, WARDEN; GEORGE W. HILL, CORRECTIONAL FACILITY,	:
Respondent	:
BARBARA CROWTHER CHADWICK,	:
Intervenor	:

ORDER

PER CURIAM

AND NOW, this 29th day of June, 2004, the Petition for Allowance of Appeal is hereby DENIED.